



**.STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 1.3.38	Subject: EMPLOYEES CHARGED WITH CRIMINAL ACTS
Chapter 1: Administration and Management	Page 1 of 3
Section 3: Human Resource Bureau	Effective Date: Dec. 15, 2008
Signature: /s/ Mike Ferriter, Director	Revised:

I. POLICY

The Department of Corrections, as a member of the criminal justice community, expects its employees to comply with all laws and inform the Department of any criminal charges that may affect Department or employee credibility or impact an employee's ability to perform in his or her assigned capacity.

II. APPLICABILITY

All Department divisions, facilities, and programs.

III. DEFINITIONS

Criminal Conduct – Alleged violation of a city, county, state or federal law including serious traffic violations, i.e., hit and run, driving under the influence (DUI), reckless driving, or other violations by staff that could result in the imposition of a jail sentence and/or suspension or revocation of the violator's driver license.

IV. DEPARTMENT DIRECTIVES

A. Lautenberg Amendment Sanctions

1. In accordance with the Lautenberg Amendment of 1996, the Department will not provide firearms/ammunitions access to employees who have been convicted of felony or misdemeanor domestic violence charges, or who are currently in the process of completing a deferred sentence related to these charges.
2. The Lautenberg Amendment, 18 U.S.C. 922(g), makes it unlawful for persons who fit any of the following criteria to possess or handle firearms or ammunition:
 - a. serving a felony sentence;
 - b. fugitive from justice;
 - c. unlawful user of or addicted to controlled substance;
 - d. adjudicated mental defective or committed to a mental institution;
 - e. illegal alien;
 - f. dishonorable discharge from military;
 - g. renunciation of U.S. citizenship;
 - h. subject to a restraining order against the harassment, stalking, or threatening of an intimate partner or child of an intimate partner or the person subject to the order; or
 - i. convicted of a misdemeanor crime of domestic violence.

Policy No. DOC 1.3.38	Chapter 1: Administration and Management	Page 2 of 3
Subject: EMPLOYEES CHARGED WITH CRIMINAL ACTS		

3. Employees whose duties require the handling of weapons or ammunition, who are presently or who become covered by any of the above listed criteria, must immediately notify their supervisor upon their change of situation to a covered status in accordance with *DOC Policy 1.3.2, Employee Performance and Conduct Guidelines, Section IV.B.3.*

B. Employee Responsibilities

1. An employee who is charged with any criminal conduct must inform his or her supervisor of the charge at the time of the next scheduled work shift.
2. If the employee is incarcerated or detained and unable to report for work, he or she must contact the immediate supervisor to request a leave of absence for each scheduled shift.
3. Failure to request a leave of absence will be considered absence without approval and the employee will be subject to disciplinary action up to and including dismissal.
4. The Department will suspend any employee who is unable to perform his or her duties due to circumstances surrounding domestic violence charges pending the completion of a Department investigation and/or the legal proceedings on the charges.

C. Supervisory Responsibilities

1. If the employee is unable to attend work because he or she is detained or incarcerated, the supervisor must either approve or disapprove a leave of absence depending upon factors such as the length of the requested leave and the Department's ability to function in the employee's absence.
2. The supervisor will conduct an initial inquiry into the incident, including gathering facts from the charging office and confer with the Human Resource Bureau chief in accordance with *DOC Policy 1.3.13, Staff Misconduct Investigations.*
3. The supervisor will inform the Human Resources Bureau chief of the charges and the potential for the charges to affect Department operations or public confidence in the employee and/or the Department. The Human Resources Bureau chief will advise regarding need for any further investigation and possible discipline in accordance with *DOC Policies 1.3.2, Employee Performance & Conduct Guidelines, and 1.3.13, Staff Misconduct Investigations.*
4. The Department will review all the circumstances of an individual case. The Department may elect to grant an unpaid leave of up to 30 days to allow the affected employee to seek a remedy restoring his or her rights to handle and/or possess weapons and ammunition. If a review of the circumstances suggests that such efforts are unlikely to be successful, the Department will take the necessary job action at the conclusion of such review.

D. Additional Requirements

1. In accordance with *DOC Policy 1.3.4, Employee Selection Guidelines*, the Human Resource Bureau will ensure a criminal background check is conducted on all new or transferred employees to determine if prior criminal convictions exist.

Policy No. DOC 1.3.38	Chapter 1: Administration and Management	Page 3 of 3
Subject: EMPLOYEES CHARGED WITH CRIMINAL ACTS		

2. If an administrator or supervisor has reason to believe a current employee may have been charged with a crime that has not been reported, he or she will request that Human Resource Bureau staff conduct a random or reasonable suspicion criminal background check on the current employee by name and date of birth. Should such a background check disclose information not reported to the Department by the employee, that employee may be suspended pending an investigation.
3. The Department may request fingerprints to resolve allegations of a false report with a secondary background check.
4. The Department may consider reasonable accommodations for the employee if there is an appropriate position vacancy.

V. CLOSING

Provisions of this policy not required by statute will be followed unless the provisions conflict with negotiated labor contracts, which will take precedence to the extent possible.

Questions concerning this policy should be directed to the Human Resource Bureau.

VI. REFERENCES

- A. *18 U.S.C. 921-922, Lautenberg Amendment*
- B. *DOC Policies 1.3.2, Employee Performance and Conduct Guidelines; 1.3.4, Employee Selection Guidelines; 1.3.13, Staff Misconduct Investigations*

VII. ATTACHMENTS

None